

IN THE SUPREME COURT

AUG 24 2009

STATE OF NORTH DAKOTA

State of North Dakota &/or **STATE OF NORTH DAKOTA** 20090242

The City of Grand Forks) (Ref. Grand Forks Citation 4876115)

Plaintiffs)

vs.) **DEFENDANT'S PETITION FOR SUPERVISORY**

Roland C. Riemers, Pro Se) **WRIT FOR JURY TRIAL and**

Defendant) **UNCONSTITUTIONAL ORDINANCE RULING**

The above named Defendant hereby Petitions the North Dakota Supreme Court for a Supervisory Writ mandating that the Grand Forks Municipal Court honor the Defendant's timely and lawful demand for a jury trial and move the trial for the above citation to the Grand Forks District Court for a jury trial, and that it rule a Grand Forks City Ordinance Unconstutional.

HISTORY

On the 22nd of July 2009. Defendant Roland C. Riemers (here-in-after just Riemers) was involved in a motor vehicle accident in Grand Forks when his motor scooter was hit on the right side by a motorcycle traveling in the same direction that was attempting to make a quick left turn and didn't look to clear traffic before attempting that turn. Riemers suffered numerous injuries to his scooter as well as physical injuries to himself. The Grand Forks police who investigated the accident afterwards issued Riemers a citation for "following too close" under Grand Forks City Ordinance 8-0517. While the fine for this violation is only \$20, the result of the citation is that Riemers was denied any and all compensation from the other motorcycle driver, and in fact that insurance company is seeking \$4,433.98 in damages from Riemers for being the cause of the accident based on that citation. And while not controlling in a law suit, the citation would also probably have a strong influence over any later civil law suits between Riemers and the other motorcycle driver.

As it is well established that North Dakota Constitutional Law provides for a jury trial for an ordinance violation of as little as \$20, Riemers attempted to serve a written demand on the Grand Forks Municipal Court for a jury trial plus a motion to hold City Ordinance 8-0517 governing following too close as unconstitutional. But on the 30th of July 2009 the Municipal Court Clerk refused to accept the written demand/motion and supporting Brief, and the clerk informed Riemers

he could hand his demand to the Municipal Judge if he wished the following day. The Clerk did accept Riemers \$20 bond on this matter. At the first appearance in Municipal Court held before Municipal Judge J.E. Widder, on the 31st of July 2009, Riemers presented his demand and supporting documents to Judge Widder and orally also demanded his right to a transfer to District Court for a jury trial. Judge Widder, without reading the any of the documents and strongly refusing to listen to any oral arguments, ruled the motion for a jury trial was denied. Later on the 10th of August 2009, Municipal Judge Henry J. Eslinger made a written order that also denied this demand. See Attachment A. Trial was set for 7th of October 2009 on this matter in Municipal Court. Neither municipal judge ruled on the constitutional issue of City Ordinance 8-0517.

LEGAL ARGUMENT

The right to a jury trial for a \$20 citation was upheld in a Memorandum Decision granting such a right by District Judge Joel Medd, 18 October 1999, City of Grand Forks v. Riemers, 18-98-C-1417. A few years later a District Judge in Minot also upheld this right in another case involving Riemers, and in the Minot case, instead of deciding the municipal case on appeal, the District judge remanded it back to the municipal court so that municipal court could follow the proper procedure under N.D.C.C. 40-18-15.1 when a jury trial was requested. (Note: case cite not available.)

In a more recent case in which Riemers had also requested a trail for a \$20 offense, this court laid out the procedure for effecting such a demand.

Although we conclude that we lack jurisdiction over Riemers' attempted appeal, we note that an appropriate procedure was available for him to challenge the denial of a jury trial. If Riemers believed he had a right to a jury trial on the charged offense he should have immediately sought a transfer of the matter from the municipal court to the district court under N.D.C.C. § 40-18-15.1, which provides in part: "A matter may be transferred to district court for trial only if within twenty-eight days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial." This Court has clarified that unless the defendant makes a timely request under the statute to transfer the matter to district court "the right to a jury trial is lost." City of Bismarck v. Fettig, 1999 ND 193, ¶ 13, 601 N.W.2d 247. If Riemers had filed a timely request to transfer the matter to district court under N.D.C.C. § 40-18-15.1, and the municipal court had denied the transfer or the district court, after transfer, had denied Riemers' request for a jury trial, Riemers could then have sought a supervisory writ from this Court. See Silkman, 317 N.W.2d at 125 n.1. This would have been the appropriate procedure to seek this Court's review of whether a defendant has a right to a jury trial in a noncriminal traffic case. Grand Forks v. Riemers, ¶8, 2008 ND 153. (Emphasis added)

Riemers also takes the position that the City Ordinance 8-0517 for following too close, is **unconstitutionally vague** with such terms as “reasonable and prudent” and “due regard” and is a denial of 14th Amendment federal due process and the Art. 1, Sec. 9 North Dakota Constitutional Right to a Remedy, and Riemers asks that this ordinance be declared unconstitutional.

Riemers asks that the Supreme Court also rule on this constitutional question because the municipal court refuses to even address the question, and the only review allowed by law would be to the District Court, and thus this legal question would forever evade review by the State Supreme Court. In the past, it is Riemers experience that even if a District Judge does make a ruling, the Grand Forks municipal judges will just ignore it and explain that there are other District Judges who haven't made that ruling, and they happen to disagree with that District Judge's ruling.

Grand Forks City Ordinance Part 1, 8-0517, Following too closely, states:

“The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicles and the traffic upon and conditions of the roadway.”

How does a driver determine his “reasonable and prudent” distance? Is reasonable and prudent for one driver likely to be vastly different for any two drivers? How is a police officer, who arrives after an accident, able to determine what was “reasonable and prudent” for the driver involved in the accident? Is just the fact there was an accident PROOF that the driver wasn't driving “reasonable and prudent”? Of course, in ND whenever there is an accident and there is one vehicle located even slightly behind another, the officer will cite the rear driver with being too close. But does “reasonable and prudent” mean a driver must insure he will NEVER have an accident, or just that his risk of having an accident is low enough that it is not a realistic risk? If a driver is to avoid absolutely any possibility of being too close to the vehicle ahead, then it would almost require that no driver follow another vehicle if that lead vehicle is in view in front of him!

How does one have “due regard to the speed of such vehicles”? In this instance both the scooter and the motorcycle had just left and intersection and were traveling at a modest rate of speed, of about 25 mph. But, what is the legal separation distance for 25 mph? What happens, as in this case, where the lead vehicle quickly decelerates and thus instantly decreases the separation?

For vehicle separation the ND Driver's manual gives a 3 second rule. You pick a spot on the road that a lead vehicle passes, and if you pass it before 3 seconds, you are too close. In this instance, the 3 second rule for 25 mph would be 36.7 feet. But, how is an officer, after the fact, going to determine if the rear driver was closer than 3 seconds? How can you apply a 3 second rule if one or both of the vehicles are increasing or decreasing their speed? And if a driver is following the distances mandated by the 3 second rule, and there are no counter-indications because of the conditions of the roadway, can he still be cited for following too close? (YES!)

In this instance, the two vehicles were traveling in a double North bound lane, with Riemers in the center lane and the other motorcycle in the right lane. So if two vehicles are in separate lanes, and going in the same direction, how can one be deemed as "driving too close" when the vehicles were not in line with each other (but actually staggered as recommended by ND)?

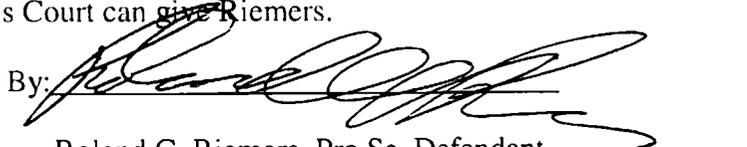
In effect, the driver is required to use his own best judgment on the following distance, but if he still has an accident he is still cited for "following too close" not because his judgment was unrealistic or faulty, but simply because his judgment did not have the mandated result..

Also, even if the ordinance was constitutional for most motor vehicles, under ND law, two **motorcycles can even drive side by side and share the same lane**. So, if you can legally drive so close that you are riding side by side (N.D.C.C.39-10.2-03), how can a motorcycle possibly be driving too close to another motorcycle when they are legally following state law?

CONCLUSIONS and RELIEF SOUGHT

1. Riemers ask that this Court uphold its previous rulings that a ND citizen does have a state constitutional right to a jury trial for even a \$20 ordinance violation.
2. That this Court issue a supervisory writ directing that the Grand Forks Municipal Court transfer this case to the Grand Forks District Court for a jury trial.
3. That this Court hold that Grand Forks City Ordinance 8-0517, Following Too Close, is unconstitutional vague in all instances as there is no possible way a driver can know exactly what the legal following distance is, and/or is solely unconstitutional as it effects two motorcycles driving in the same direction as it conflicts with specific N.D.C.C.39-10.2-03.
4. Any and all other remedies and relief that this Court can give Riemers.

Dated: 21 August 2009

By: 

Roland C. Riemers, Pro Se, Defendant

STATE OF NORTH DAKOTA

IN MUNICIPAL COURT

COUNTY OF GRAND FORKS

CITY OF GRAND FORKS

City of Grand Forks,)

Plaintiff.)

vs)

)

Roland Riemers,)

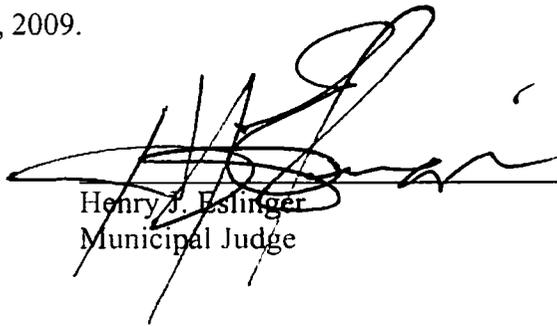
Defendant,)

ORDER

Citation #4876115

After reviewing the defendants motion for a Jury Trial in the above referenced case and having reviewed NDCC § 12.1-32-03.1(1) and NDCC § 39-06.1-02, The Court orders that the motion for a Jury Trial is hereby DENIED.

Dated this 10 day of August, 2009.



Henry J. Eslinger
Municipal Judge

Exhibit A

IN MUNICIPAL COURT CITY OF GRAND FORKS STATE OF NORTH DAKOTA

State of North Dakota)	Citation 4876115
Plaintiff)	DEMAND TO TRANSFER
vs.)	TO DISTRICT COURT
Roland Riemers)	FOR JURY TRIAL
Defendant pro se)		

I, Roland C. Riemers, hereby give notice of my Demand to transfer the above case from Municipal Court to Grand Forks County District Court for a Jury Trial under the authority of N.D.C.C. 40-18-15.1.

LEGAL BASES FOR REQUEST

Article 1, Section 13 of the N.D. Constitution states, "*The right of trial by jury shall be secured to all, and remains inviolate.*" This provision neither enlarges nor restricts the right of trial by jury, but merely preserves the right as it existed at the time of the adoption of our constitution. City of Riverside v. Smuda, 399 N.W. 2d 768, 770 (N.D. 1983). In addition to this right, at the time our state Constitution was established, the Municipal Courts also had the obligation to provide for a jury trial, and thus this right would also be preserved..

In 1984 the North Dakota Supreme Court analyzed the law as it existed prior to the adoption of the State Constitution to determine where the right to a jury trial existed. See City of Bismarck v. Altevogt, 353 N.W. 2d 760, 764-765 (N.D. 1984) They determined that the Compiled Laws of the Territory of Dakota (1877) defined the right to trial by jury as it existed prior to and at the time of the adoption of Article 1, Section 13 of the North Dakota Constitution. Section 937 stated:

"Cases before the city justice arising under the city ordinances shall be tried and determined by the justice without the intervention of a jury except in cases where under the provisions of the ordinances of the city imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be twenty dollars (\$20) or over, and the defendant shall demand a trial by jury before the commencement of such trial." Thus the right to a trial by jury in a case involving the violation of a city ordinance of \$20 or more did exist at the time of the adoption of the North Dakota Constitution and it also exists now.

This right to a jury trial for a \$20 citation was upheld in a Memorandum Decision granting such a right by District Judge Joel Medd, 18 October 1999, City of Grand Forks v. Riemers, 18-98-C-1417. A few years later a District Judge in Minot also upheld this right in another case involving Riemers, and in the Minot case, instead of deciding the municipal case on appeal, the District judge remanded it back to the municipal court so that municipal court could follow the proper procedure under N.D.C.C. 40-18-15.1 when a jury trial was requested. (Note: case cite not available.)

More recently the North Dakota Supreme Court in another case involving Riemers and looked at this specific question While the Court did not rule directly on the jury trial issue itself due to

jurisdictional problems in the case, the Court did give specific direction in the procedure for requesting a jury trial and Supreme Court review if jury trial right is refused. The Supreme Court stated:

[¶8] Although we conclude that we lack jurisdiction over Riemers' attempted appeal, we note that an appropriate procedure was available for him to challenge the denial of a jury trial. If Riemers believed he had a right to a jury trial on the charged offense, he should have immediately sought a transfer of the matter from the municipal court to the district court under N.D.C.C. § 40-18-15.1, which provides in part: "A matter may be transferred to district court for trial only if within twenty-eight days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial." This Court has clarified that unless the defendant makes a timely request under the statute to transfer the matter to district court "the right to a jury trial is lost." City of Bismarck v. Fettig, 1999 ND 193, ¶ 13, 601 N.W.2d 247. If Riemers had filed a timely request to transfer the matter to district court under N.D.C.C. § 40-18-15.1, and the municipal court had denied the transfer or the district court, after transfer, had denied Riemers' request for a jury trial, Riemers could then have sought a supervisory writ from this Court. See Silkman, 317 N.W.2d at 125 n.1. This would have been the appropriate procedure to seek this Court's review of whether a defendant has a right to a jury trial in a noncriminal traffic case. Grand Forks v. Riemers, 2008 ND 153. (Emphasis added)

CITY TRAFFIC PROCEDURES UNCONSTITUTIONAL

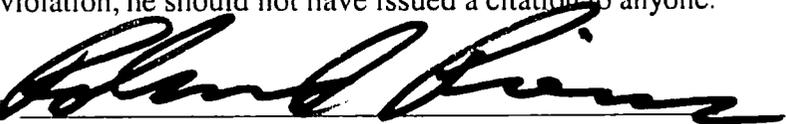
Riemers takes the position that the City Ordinance 8-0517 for following too close, is **unconstitutionally vague** with such terms as "reasonable and prudent" and "due regard" is thus a denial of 14th Amendment federal due process and the Art. 1, Sec. 9 North Dakota Constitutional Right to a Remedy, and Riemers asks that this ND statute be declared unconstitutional.

FURTHER OBJECTIONS

Riemers would further object that: (1). The citation given him is illegible and thus is a denial of procedural due process. (2). The other driver was not cited for Improper Equipment (he did not have side view mirrors as required by law, which is probably the main cause of the accident), nor did the other driver give a turn signal as required by NDCC 39-10-38 or turn his head to check his rear. He also attempted to make a left turn from the right lane and thus T-boned Riemers. (3). As the other driver slammed into Riemers' scooter on his mid-lower-side, and as there was no damage what-so-ever on the front of Riemers' scooter, then obviously Riemers could not have hit him and thus could not have been following some at his side. Furthermore, unlike other vehicles, NDCC allows motorcycles to lane share, and encourages staggering in that lane. Riemers was in that suggested staggered position for best safety. By clear logic, Riemers could not have been following too close when both drivers were on motorcycles. (4). The citing officer did not witness the accident, and therefore can not testify as to anyone's actions before the accident. Other than the other driver's equipment violation, he should not have issued a citation to anyone.

Dated: 30 July 2009

By



Roland C. Riemers, Pro Se, Plaintiff

P.O. Box 14702, Grand Forks, ND 58208, 701-881-1555

RECEIVED BY CLERK
SUPREME COURT
AUG 24 2009

IN STATE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota &/or)
City of Grand Forks)
Plaintiffs)
vs.)
Roland Flattum-Riemers)
Defendant pro se)

Ref. G.F. Citation 4876115

AFFIDAVIT OF MAIL SERVICE

I, DAVID RUUD, being sworn, state that I am a citizen of the United States of America over the age of eighteen and that I am not a party to the above-entitled matter. That on this 21 day of August 2009, this Affiant deposited in the mailing department of the United States Post Office at Grand Forks, North Dakota, true and correct copies of the following document filed in the above captioned action.

DEFENDANT'S SUPREME COURT PETITION

That copies of the above documents were securely enclosed in an envelope with first class postage duly prepaid, and addressed as follows:

**Grand Forks City Atty. Kristi Pettit, G.F. Municipal Court,
1701 N. Washington St., Grand Forks, ND 58203-1446**

To the best of his Affiant's knowledge, information and belief, such addresses as given above are the actual post office addresses of the parties intended to be served. The above documents were duly mailed in accordance with provisions of the North Dakota Rules of Civil Procedure.

Affiant's signature: David Ruud

The above person I have personally identified, and has subscribed and sworn to before me this 21 day of August, 2009.

Paul [Signature]
Notary Public, State of North Dakota

ROLAND RIEMERS
Notary Public, State of North Dakota
My Commission Expires March 1, 2012